

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1524 of 2017

ORDER:

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") is filed by accused No.2 in Crime No.122 of 2016 of P.S. Market Police Station, Hyderabad, registered for the offence punishable under Section 379 of the Indian Penal Code, 1860 (for short "IPC"), apprehending her arrest in connection with the above crime.

The case of the prosecution is that one Smt.V.Eswari lodged complaint alleging that some unknown persons committed theft of 1 long chain, 2 bracelets of children, 1 chain, 2 rings, 2 matics, 2 children rings, 2 Rupulu, 1 pair of ear rings and 2 Gold *pusalu*, total gold weighing 9 tulas 1 ½ grams. Based on the said complaint, the above crime was registered.

Learned counsel for the petitioner contends that the petitioner/A.2 is a resident of Parbhani, Maharashtra and no efforts were made to arrest her, but she is shown as 'absconding' and the Sessions Court dismissed her application for bail on the ground that she is absconding. Learned counsel further contends that there is difference between 'avoiding arrest' and 'absconding' and, in support thereof, relies upon a decision of the Bombay High Court in **Nitin Chandrrkant Kadam and Ors. v. The State of Maharashtra and Ors.**¹

As seen from the case diary, the Police seized the gold items from the possession of A.3, under the cover of *Panchanama* dated 17.10.2016 and A.3 made a confession about commission of theft along with the petitioner herein. When once stolen property was

¹ 2016 SCC OnLine Bom 9850

recovered from the possession of the accused, presumption under Section 114-A of the Indian Evidence Act, 1872 would apply. The presumption can be rebutted by producing material before this Court or by adducing evidence during trial. It is clear from the record that the petitioner is a resident of Parbhani, Maharashtra and in case she is enlarged on pre-arrest bail, it would be difficult to secure her presence during trial.

The further contention of the learned counsel for the petitioner is that petitioner is a senior citizen. However, even as per the cause title she is only 38 years old and therefore the contention of the learned counsel for the petitioner cannot be accepted.

In such case, this Court cannot exercise discretion to grant pre-arrest bail to the petitioner. At this stage, learned counsel for the petitioner requested to direct the investigating agency to follow Section 41-A of Cr.P.C., and the guidelines issued by the Apex Court in **Arnesh Kumar vs State Of Bihar & Anr²**. However, it is needless to give such direction since it is the obligation of the Police to adhere to the guidelines issued by the Apex Court in the above decision. Otherwise, it would amount to contempt. Therefore, no such direction need be given.

In the result, the Criminal Petition is dismissed with the above observations.

M. SATYANARAYANA MURTHY, J

February 28, 2017
MRR

² 2014(8) SCC 273